



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

JUN 06 2019

REPLY TO THE ATTENTION OF

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Don Schumacher  
Flo~Pro Performance Exhaust  
and Red Deer Exhaust, Inc.  
P.O. Box 783  
Red Deer, Alberta T4N 5H2

c/o Hazel Ocampo  
Procopio, Cory, Hargreaves & Savitch LLP  
525 B Street, Suite 2200  
San Diego, CA 92101

Re: Finding of Violation of the United States Clean Air Act and offer to confer with U.S. EPA

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Dear Mr. Schumacher:

The United States Environmental Protection Agency (EPA) is issuing the enclosed Finding of Violation (FOV) to Red Deer Exhaust, Inc. and Flo~Pro Performance Exhaust (Red Deer Exhaust, Flo~Pro, or collectively, you), via your counsel, for violating Section 203(a)(3)(B) of the Clean Air Act (CAA), 42 United States Code (U.S.C.) § 7522(a)(3)(B). As summarized in the attached FOV, EPA has determined that Red Deer Exhaust and Flo~Pro have sold and/or offered to sell parts or components in the United States that bypass, defeat, or render inoperative emission controls and/or elements of design on motor vehicles or motor vehicle engines that were installed by the original equipment manufacturer to comply with CAA emission standards.

We are offering you an opportunity to confer with us about the violations alleged in the FOV. The conference will give you an opportunity to present information on the specific findings of violation, any efforts you have taken to comply, and the steps you will take to prevent future violations. In addition, in order to make the conference more productive, we encourage you to submit to us any information responsive to the FOV prior to the conference date.

Please plan for your facility's technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

The EPA contact in this matter is Ethan Chatfield. You may call him at (312) 886-5112 to request a conference. You should make the request within 10 calendar days following receipt of this letter. We should hold any conference within 30 calendar days following receipt of this letter.

Sincerely,



For Michael D. Harris  
Acting Director  
Enforcement and Compliance Assurance Division

Enclosure

1. Title II of the CAA, 42 U.S.C. §§ 7521–7554, was enacted to reduce air pollution from mobile sources. In enacting the CAA, Congress found, in part, that “the increasing use of motor vehicles . . . has resulted in mounting dangers to the public health and welfare.” Section 101(a)(2) of the CAA, 42 U.S.C. § 7401(a)(2). Congress’s purpose in enacting the CAA included “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population,” and “to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution.” Section 101(b)(1)–(2) of the CAA, 42 U.S.C. § 7401(b)(1)–(2).
2. EPA promulgated emission standards for particulate matter (PM), nitrogen oxides (NO<sub>x</sub>), and other pollutants applicable to motor vehicles and motor vehicle engines, under Section 202 of the CAA, 42 U.S.C. § 7521. *See generally* 40 C.F.R. Part 86.
3. Section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), prohibits a motor vehicle manufacturer from selling a new motor vehicle in the United States unless the motor vehicle is covered by a Certificate of Conformity (COC). EPA issues COCs to motor vehicle and motor vehicle engine manufacturers under Section 206(a) of the CAA, 42 U.S.C. § 7525(a), to certify that a particular group of motor vehicles and motor vehicle engines conform to applicable EPA requirements governing motor vehicle emissions. The COC will include, among other things, a description of the motor vehicle engines, their emission control systems, all auxiliary emission control devices, and the engine parameters monitored.

4. Motor vehicle and motor vehicle engine manufacturers employ many devices and elements of design to meet emission standards. *Element of design* means “any control system (i.e., computer software, electronic control system, emission control system, computer logic), and/or control system calibrations, and/or the results of systems interaction, and/or hardware items on a motor vehicle or motor vehicle engine.” See 40 C.F.R. §§ 86.094-2 and 86.1803-01.
5. To meet the emission standards in 40 C.F.R. Part 86, and qualify for a certificate of conformity, diesel-powered motor vehicle and motor vehicle engine manufacturers may utilize control devices or elements of design such as Diesel Oxidation Catalyst (DOC), Diesel Particulate Filter (DPF), Exhaust Gas Recirculation (EGR), and/or Selective Catalytic Reduction (SCR) (which includes the use of diesel exhaust fluid or DEF) systems.
6. Diesel-powered motor vehicle and motor vehicle engine manufacturers may also employ retarded fuel injection timing as a primary element of design to limit emissions of NO<sub>x</sub>. See 59 Fed. Reg. 23,264 at 23,418 (May 5, 1994) (“[I]njection timing has a very significant impact on NO<sub>x</sub> emission rates, with advanced timing settings being associated with higher NO<sub>x</sub> ...”).
7. Modern motor vehicles and engines are equipped with electronic control modules (ECMs). ECMs continuously monitor engine and other operating parameters and control the emission control devices and elements of design, such as the DOC, DPF, EGR, and SCR systems and the engine fueling strategy.
8. Under Section 202(m) of the CAA, 42 U.S.C. § 7521(m), EPA promulgated regulations for motor vehicles manufactured after 2007 that require motor vehicles to have numerous devices or elements of design that, working together, can detect problems with the vehicle’s emission-related systems, alert drivers to these problems, and store electronically-generated malfunction information. See 40 C.F.R. §§ 86.007-17, 86.010-18, and 86.1806-05. These devices or elements of design are referred to as “onboard diagnostic systems” or “OBD” systems.
9. Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), makes it unlawful for “any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.”
10. Section 216(2) of the CAA, 42 U.S.C. § 7550(2), defines “motor vehicle” as “any self-propelled vehicle designed for transporting persons or property on a street or highway.” See also 40 C.F.R. § 85.1703 (further defining “motor vehicle”).

## **Background**

11. Red Deer Exhaust and Flo~Pro are aftermarket automotive parts and components suppliers located in Red Deer, Alberta, Canada.
12. Red Deer Exhaust and Flo~Pro are each a “person”, as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
13. Red Deer Exhaust and Flo~Pro each advertises, markets, and distributes its products in the United States through authorized dealers, and online at [www.flopro.com](http://www.flopro.com). The online dealer directory lists numerous authorized dealers.
14. On February 15, 2018, EPA issued a CAA Section 208 Information Request to one of Red Deer Exhaust/Flo~Pro’s authorized dealers, Diesel Ops LLC in Waterford, Michigan.
15. On April 27, 2018, Diesel Ops responded to EPA’s Information Request. In the response, Diesel Ops provided information showing that between January 1, 2015, and February 15, 2018, Diesel Ops purchased from Red Deer Exhaust/Flo~Pro parts or components for which a principal effect of each part or component was to bypass, defeat, or render inoperative air pollution emission control systems installed on or in motor vehicles and motor vehicle engines in compliance with Title II of the CAA. More specifically, Red Deer Exhaust/Flo~Pro sold to Diesel Ops parts and components that allow for the bypass, removal, and/or disabling of emission controls, such as the DOCs, DPFs, EGRs, and/or SCR emission control systems on or in motor vehicles or motor vehicle engines.
16. On July 24, 2018, EPA issued a CAA Section 208 Information Request to another one of Red Deer Exhaust/Flo~Pro’s authorized dealers, Thunder Diesel & Performance Co. (Thunder Diesel) located in Mountain Home, Arkansas.
17. On September 24, 2018, Thunder Diesel responded to EPA’s Information Request. In the response, Thunder Diesel provided information showing that between January 1, 2016, and July 24, 2018, Thunder Diesel purchased from Red Deer Exhaust/Flo~Pro parts or components for which a principal effect of each part or component was to bypass, defeat, or render inoperative air pollution emission control systems installed on or in motor vehicles and motor vehicle engines in compliance with Title II of the CAA. More specifically, Red Deer Exhaust/Flo~Pro sold to Thunder Diesel parts and components that allow for the bypass, removal, and/or disabling of emission controls, such as the DOCs, DPFs, EGRs, and/or SCR emission control systems on or in motor vehicles or motor vehicle engines.
18. In the course of civil enforcement investigations, EPA has identified numerous downstream parties that are selling Red Deer Exhaust/Flo~Pro parts or components in violation of the CAA.
19. Red Deer Exhaust and Flo~Pro knew or should have known that these products were offered for sale, sold, or installed to bypass, defeat, or render inoperative elements of the

design that control emissions of regulated air pollutants of motor vehicles and motor vehicle engines in the United States.

20. EPA finds that the parts and components sold and offered for sale by Red Deer Exhaust and Flo~Pro in the United States are intended for “motor vehicles” as defined by Section 216(2) of the CAA. As a legal matter, there is no “off-road use only” or “competition only” exemption under the CAA for motor vehicles or motor vehicle engines. “Motor vehicle” is defined as “any self-propelled vehicle designed for transporting persons or property on a street or highway.” CAA § 216(2), 42 U.S.C. § 7550(2); *see also* 40 C.F.R. § 85.1703 (further defining “motor vehicle”). These definitions make no exemption for motor vehicles or motor vehicle engines used for competition.<sup>1</sup> More generally, these definitions are based on vehicle design attributes (*e.g.*, ability to travel over 25 miles per hour, lack of features that render street use unsafe) and not vehicle use.
21. Flo~Pro’s website ([www.flopro.com](http://www.flopro.com)) states that its parts “are for use on non-registered race vehicles on closed-course competition events” and that “installing or using [Flo~Pro parts] on any emission controlled vehicle (“street” or “off-road”) may violate federal and/or state emissions laws and regulations” and that its products are “not available to ship to California.” Under a section of Flo~Pro’s website called “Performance Exhaust,” however, Flo~Pro lists numerous motor vehicle makes and model years that are certified under the CAA (*i.e.* have a valid COC).

### **Violations**

22. Red Deer Exhaust and Flo~Pro violated Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), by manufacturing, selling and/or offering to sell parts and/or components in the United States where a principal effect of the part or component is to bypass, defeat, or render inoperative emission control devices such as the DOC, DPF, EGR, OBD, and SCR systems installed on motor vehicles or motor vehicle engines in compliance with the CAA, and Red Deer Exhaust and Flo~Pro knew or should have known that such parts and/or components were being used by its customers in the United State to bypass, defeat, or render inoperative the emission controls on motor vehicles and/or motor vehicle engines certified under the CAA.

### **Environmental Impact of Violations**

23. These violations may result in excess emissions of PM, NO<sub>x</sub>, hydrocarbons, and other air pollutants and contribute to increased ground level ozone concentrations. PM, especially fine particulates containing microscopic solids or liquid droplets, can get deep into the lungs and cause serious health problems, including decreased lung function; chronic bronchitis; and aggravated asthma. Additionally, current scientific evidence links short-term NO<sub>x</sub> exposures, ranging from 30 minutes to 24 hours, with adverse respiratory

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<sup>1</sup> In contrast, the CAA exempts from the definition of “nonroad vehicle” and “nonroad engine” those vehicles and engines used solely for competition. CAA § 216(10)–(11); 42 U.S.C. § 7550(10)–(11). EPA has implemented regulations describing how to exempt from CAA requirements nonroad vehicles and engines used solely for competition. 40 C.F.R. § 1068.235. These regulations explicitly do not apply to motor vehicles and motor vehicle engines. 40 C.F.R. § 85.1701(a)(1).

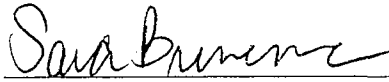
effects including airway inflammation in healthy people and increased respiratory symptoms in people with asthma. Exposure to ground-level ozone can also reduce lung function and inflame lung tissue; repeated exposure may permanently scar lung tissue.


**Enforcement Authority**

24. EPA may bring an enforcement action for these violations under its administrative authority or by referring this matter to the United States Department of Justice with a recommendation that a civil complaint be filed in federal district court. CAA §§ 204 and 205, 42 U.S.C. §§ 7523 and 7524. Persons violating Section 203(a)(3) of the CAA, 42 U.S.C. § 7522(a)(3), are subject to an injunction under Section 204 of the CAA, 42 U.S.C. § 7523, and a civil penalty of up to \$4,735 for each violation. CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4.

  
Date

6/6/19



 Michael D. Harris  
Acting Director

Enforcement and Compliance Assurance Division

**CERTIFICATE OF MAILING**

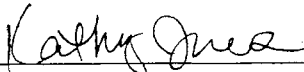
I certify that I sent a Finding of Violation, No. EPA-5-19-MOB-04, by Certified Mail, Return Receipt Requested, to **(Note: international address)**:

Don Schumacher  
Red Deer Exhaust and  
Flo~Pro Inc.  
P.O. Box 783  
Red Deer, Alberta T4N 5H2

Hazel Ocampo  
Procopio, Cory, Hargreaves & Savitch LLP  
525 B Street, Suite 2200  
San Diego, CA 92101  
[hazel.ocampo@procopio.com](mailto:hazel.ocampo@procopio.com)

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On the 10<sup>th</sup> day of June 2019.



Kathy Jones  
Program Technician  
AECAB, PAS

CERTIFIED MAIL RECEIPT NUMBER: international mailing